

The Detention of Status Offenders-Georgia Code and the Federal Law

The laws which apply to the detention of status offenders in Georgia come from two conflicting sources-the Georgia Code (O.C.G.A.) and Federal Regulations (JJDPA) governing juvenile justice funding. This document briefly highlights the similarities and differences between the two.

Georgia Code (O.C.G.A.) 15-11-2 (12); 15-11-47/48/49

15-11-2 (12) (Paraphrased for readability)

"Unruly child" under Georgia law means a child who is in need of supervision, treatment or rehabilitation AND meets one of the following criteria:

- Is habitually truant from school
- Is habitually disobedient of the reasonable commands of their parent/guardian/legal custodian
- Has committed an offense applicable only to a child
- Without just cause and consent of parent/legal custodian deserts their place of abode
- Wanders or loiters about the streets, highway, or any public place, between the hours of 12:00 Midnight and 5:00 A.M.
- Disobeys the terms of supervision contained in a court order which has been directed to such child, who has been adjudicated unruly
- Patronizes any bar where alcoholic beverages are being sold, unaccompanied by such child's parent/guardian/custodian, or possesses alcoholic beverages

OR

- Has committed a delinquent act and is in need of supervision, but not of treatment or rehabilitation.

15-11-47 (e) Treatment of Unruly Child (Paraphrased for readability)

A child who is taken into custody on suspicion of being an unruly child may be held by the officer for no more than 12 hours. During that time the child should be released to the child's parents, taken to a shelter for unruly children, brought before the juvenile court, or have been subject to a detention review decision by an Intake Officer. If none of the above happens, the child should be released.

Units of local government are authorized to establish facilities for children to be informally detained after being taken into custody for unruly acts, but the child should not be restrained in cells or in other places apart from other children unless the child engages in disruptive behavior while at the informal holding facility.

15-11-48 (e) Place of detention; children alleged to be unruly (Paraphrased for readability)

Allegation of unruliness. A child alleged to be unruly who has not been released from custody may be detained or placed in shelter care **only in:**

(1) A licensed foster home or a home approved by the court which may be a public or private home or the home of the noncustodial parent or of a relative;

(2) A facility operated by a licensed child welfare agency

No child alleged to be or found to be unruly who has not previously been adjudicated unruly may be detained in a secure juvenile detention facility.

The only exception noted in this section is unless such child is alleged to be under the court's jurisdiction for deserting their place of abode.

IF this exception is met, **THEN the child can be placed in a secure juvenile detention facility,** but only so long as is required to effect the child's return home OR to ensure the child's presence at a scheduled court appearance (only if they have previously failed to appear for a court appearance).

This period is not to exceed 72 hours. In the event a child alleged to be unruly comes within the purview of the Interstate Compact on Juveniles and the proper authorities of a demanding state have made an official return request to the proper authorities of this state, the Interstate Compact on Juveniles shall apply to the child.

To summarize O.C.G.A :

Accused Unruly child (not adjudicated)- can ONLY be placed in foster care home or child welfare facility.

Adjudicated Unruly child (with facing a new Unruly charge)- can be placed in foster care home, child welfare facility, OR securely detained for 72 hours (and an additional 48 hour period). A Valid Court Order should be in force.

Runaway child- can be placed in foster care home, child welfare facility, OR securely detained for as long as it takes to return child home, or to ensure the runaway child's presence at a scheduled court appearance (only when the child has previously failed to appear for a scheduled court appearance).

Federal Regulations- Juvenile Justice and Delinquency Prevention Act (JJDPa)

42 U.S.C. 5601

The Juvenile Justice and Delinquency Prevention Act (JJDPa) is the single most important piece of federal legislation affecting youth in juvenile justice systems across the country.

Currently Georgia receives approximately \$3.8 million in federal juvenile justice funding annually to provide delinquency prevention and intervention programming at the local level.

The JJDPa contains four “core protections” with which states must comply as a condition of receiving federal juvenile justice funding.

- **Deinstitutionalization of Status Offenders (DSO)**
Status offenses are offenses that are only crimes if committed by children, such as skipping school, running away, breaking curfew, and possession or use of alcohol. Under the JJDPa, status offenders **may not be held in secure detention or confinement in excess of 24 hours**. Instead, these children are to receive community-based services,
- **Jail Removal**
Juveniles may not be detained in adult jails except for limited ("de minimis") periods before release or transporting them to an appropriate juvenile placement (6 hours),
- **Sight and Sound Separation**
When children are held in an adult jail under the exceptions listed above, they may not have any sight or sound contact with adult inmates.
- **Disproportionate Minority Contact (DMC)**
Under the DMC requirement, states must assess and address the disproportionate contact of youth of color at key decision points in the juvenile justice system

JJDPa & the detention of status offenders

If the child is before the court as a first time offender (no previous active court order on file), the JJDPa allows that the child may be detained for up to 24 hours (EXCLUDING WEEKENDS & HOLIDAYS), immediately following a court appearance.

At the expiration of this time period, the child may be placed in a non-secure facility or other placement, but **cannot remain in secure detention**. The child may be given a conditional release; however, the child must be warned that any violation of the stated conditions will result in detention in order for such extension to be valid under the federal mandates.

VALID COURT ORDER EXCEPTION-

A valid court order is a conditional release or probation order specifically stating that the child was informed that any violation would result in detention. A detained unruly child who is already subject to a valid court order may be detained beyond 24 hours, but only if there is "no less restrictive alternative available." If the child is returned to a detention, a detention order should issue stating the child was subject to a valid court order and that no less restrictive alternative was available. Once a child is detained under the "valid court order" exception, the state statute still applies and the time restrictions set out above apply.

To summarize JJDP:

Only allows for the secure detention of an accused Unruly child for 24 hours, excluding weekends or holidays before an appearance before the juvenile court is required. If the court conducts this 24 hour hearing within the time limits, then the judge can place the child back in secure detention for an additional 24 hours before they must be released. If any of these time limits are not met, this counts as a violation of the JJDP.

If the Unruly child is subject to a previously issued Valid Court order that specifies the child can be securely detained if they violate the conditions of the Order, then they can be securely detained under the Valid Court Order exception with no violation of the JJDP

JJDP does NOT apply to delinquent offenses.

Tracking and reporting the detention of status offenders

The Governor's Office For Children and Families serves as the administrator of federal juvenile justice funds for the state and is in charge of seeing that accurate juvenile crime data is collected and reported to the U.S. Department of Justice and the Georgia General Assembly.

If Georgia has too many violations of the DSO protection, then the state stands to lose federal monies that support our juvenile justice system.

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